

## **BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

<b>IN THE MATTER OF THE COMPLAINT FILED )</b>	<b>NOTICE OF TIME AND</b>
<b>BY MONTANA-DAKOTA UTILITY CO. )</b>	<b>PLACE FOR DECISION</b>
<b>AGAINST WESLEY JOHNSON REGARDING )</b>	
<b>FAILURE TO PROVIDE NOTIFICATION OF )</b>	<b>OC04-003</b>
<b>PROPOSED EXCAVATION AS REQUIRED BY )</b>	
<b>SDCL 49-7A-5 AND A FAILURE TO )</b>	
<b>PROPERLY EXPOSE A MARKED )</b>	
<b>UNDERGROUND UTILITY LINE AS REQUIRED )</b>	
<b>BY SDCL 49-7A-8</b>	

On April 16, 2004, pursuant to SDCL 49-7A-17, the South Dakota One Call Board (Board) received a complaint filed by Montana-Dakota Utilities Co. of Rapid City, South Dakota (MDU), against Wesley Johnson, the owner of CreateAScape Landscaping, Rapid City, South Dakota (Johnson). According to the complaint, Johnson severed a natural gas distribution pipeline owned by MDU while excavating. The complaint alleged that Johnson: 1) failed to notify the one-call center before excavating in violation of SDCL 49-7A-5 and 2) failed to hand-dig and expose the natural gas facility in violation of SDCL 49-7A-8.

Pursuant to SDCL 49-7A-23 and 49-7A-24, a copy of the complaint was forwarded to Johnson via certified mail sent on April 27, 2004, advising him that he must file an answer in writing by May 21, 2004. Return receipt indicates that Johnson signed for the notice on April 29, 2004. On May 26, 2004, an answer was filed by Johnson. Pursuant to SDCL 49-7A-22, a five member panel (Panel) was appointed by Kevin Kouba, Chairman of the Board, for the purpose of determining whether there was probable cause to believe there had been a violation of any statute or rule of the Board. The Panel met on June 2, 2004. Pursuant to SDCL 49-7A-25, based on the complaint filed by MDU and the answer filed by Johnson, the Panel determined by unanimous vote that there had been violations of the statutes as alleged in the complaint.

With regard to the alleged violation of SDCL 49-7A-5, the Panel found that there was probable cause to conclude that Johnson had violated SDCL 49-7A-5 by commencing excavation without providing the required notice to the South Dakota One Call System. Pursuant to SDCL 49-7A-18 and 49-7A-26, the Panel recommended a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the basis that Johnson fully comply with SDCL Chapter 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-003(A). With regard to the alleged violation of SDCL 49-7A-8, the Panel found that there was probable cause to conclude that Johnson had violated SDCL 49-7A-8 by failing to properly expose a marked underground utility line. Pursuant to SDCL 49-7A-18 and 49-7A-26, the Panel recommended a penalty of one thousand dollars (\$1000.00) with four hundred dollars (\$400.00) suspended on the basis that Johnson fully comply with SDCL Chapter 49-7A

and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-003(B).

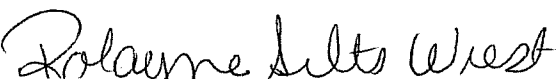
Pursuant to SDCL 49-7A-27, a copy of the Panel's recommendations was sent to the parties. On June 8, 2004, the Board received an acceptance of the Panel's recommendations from MDU. On June 23, 2004, the Board received a rejection of the Panel's recommendations and a request for a hearing from Johnson.

The Board finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-7A, including 49-7A-2, 49-7A-4, 49-7A-5, 49-7A-8, 49-7A-10, 49-7A-12, 49-7A-17 through 49-7A-27, inclusive, and SDCL Chapter 1-26.

A hearing was held as scheduled on September 15, 2004, at 1:00 p.m. (CDT) in Conference Room A at the Holiday Inn Express located at 110 East Stanley in Fort Pierre, SD. The issues at the hearing were: 1) whether Johnson violated SDCL 49-7A-5 by commencing excavation without providing advance notification to the one-call center; and 2) whether Johnson violated SDCL 49-7A-8 by failing to properly expose a marked underground utility line. Also at issue was whether penalties shall be imposed by the Board pursuant to SDCL 49-7A-18 and/or 49-7A-19, and, if so, what those penalties shall be. After listening to the testimony of the parties, a majority of the Board voted to take the matter under advisement.

On October 4, 2004, the Board will vote on a decision regarding this matter. The Board will meet in person or by teleconference at 10:30 a.m. (CDT), October 4, 2004, in the Public Utilities Commission's Conference Room, located in the State Capitol, 500 E. Capitol, Pierre, SD. A party may join the meeting by telephone by calling (605)773-6147.

Dated at Pierre, South Dakota, this 23<sup>rd</sup> day of September, 2004.

  
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Rolayne Ailt Wiest

Attorney for the One Call Board  
500 East Capitol  
Pierre, SD 57501  
Telephone (605) 773-3201

## CERTIFICATE OF SERVICE

I hereby certify that copies of Notice of Time and Place for Decision were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 23rd day of September, 2004.

Mr. Jim Mann  
Montana-Dakota Utilities Co.  
P.O. Box 1060  
Rapid City, SD 57709-1060

Mr. Wesley Johnson  
CreateAScape Landscaping  
1323B Sydney Drive  
Rapid City, SD 57701

Mr. Thomas G. Fritz  
Attorney at Law  
Lynn, Jackson, Shultz & Lebrun, P.C.  
P. O. Box 8250  
Rapid City, SD 57709-8250

Rolayne Ailts Wiest  
Rolayne Ailts Wiest  
Attorney for the One Call Board

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Street, Apt. No., or PO Box No. <u>1323B Sydney Drive</u>	
City, State, ZIP+4 <u>Rapid City, SD 57701</u>	
PS Form 3800, June 2002	
See Reverse for Instructions	